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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,383	11/30/2001	John Alexander Gaskarth	SWH/AVK/P71830US	1257

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05/01/2003

Keeling Hudson  
901 North Post Oak Road  
Houston, TX 77024

EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 05/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/980,383

Applicant(s)

GASKARTH, JOHN ALEXANDER

Examiner

Elizabeth M Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 1-22 have been renumbered as claims 33-54.

2. Claims 33-54 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not teach the proportions of thermoset and thermoplastic resin which are required in order to form the fluid transfer material and also does not teach the form in which the two types of resin should be, i.e. melted, particulate, fibrous, etc. .

3. Claims 33-53, 54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Independent claims 33 and 50 recite that there is "sufficient thermoset material to create an open structure", (claim 33) or there is "sufficient thermoset material, and fibrous material when present, to create an open structure" ( claim 50). This limitation renders the claims vague and indefinite because it is not clear how having a particular amount of a thermoset material would result in an open structure. Similarly, claim 2 recites that there is sufficient fibrous

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material to create an open structure. It is not clear how having a particular amount of fibrous material would create an open structure. The claimed structure is not clear.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 33-40, 50-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over

DE 4217739 to Kallenberg. Kallenberg discloses a drainage material comprising plastic waste formed into threads. The waste is heated to melt part of it in order to partially bond the threads in order to stabilize the material while still leaving voids. The material may further comprise glass fibers, ( i.e., the inorganic fibers of claim 38). See abstract. Kallenberg does not disclose that the waste comprises both thermoplastic and thermoset resin, but it is reasonable to presume that plastic waste would comprise both types of plastic. Additionally, the fact that some of the material melts upon heating indicates that some of the material was thermoplastic. Kallenberg does clearly teach employing waste plastic. Therefore, it would have been obvious to have employed both thermoplastic and thermoset plastic as the waste plastic because employing both types would allow for more plastic to be recycled and also would enable the drainage material to be bonded by the thermoplastic material while still maintaining structural integrity due to the thermoset plastic. The choice of particular known types of plastics would have been obvious to one of ordinary skill in the art depending upon what materials were available. Kallenberg further

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teaches the use of the drainage material within a drainage system, such as in combination with a gutter. See fig. 1.

6. Claims 33-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallenberg in view of GB 2,201,872 to Maynes.

Kallenberg discloses a drainage material as set forth above. Kallenberg differs from the claimed invention because Kallenberg does not teach surrounding the drainage material with a scrim or net or within a porous pipe. Maynes teaches that drainage materials comprising a plurality of plastic spheres having void spaces therebetween may be encased in a net. See page 5, lines 8-17.

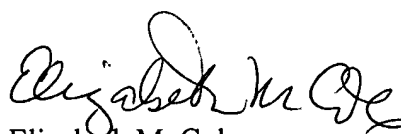
Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have encased the Kallenberg material in a net in order to hold the drainage material of Kallenberg in place.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

  
Elizabeth M. Cole

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Primary Examiner  
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e.m.c

April 30, 2003